IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1134 (MS) OF 2006

Shiv Dayal Singh Rawat,
S/o late Sri Mathura Singh,
R/o Garhwal Sweet House,
Agency Mohalla, Pauri,
District Pauri Garhwal. .....Petitioner.

Versus

1. Judge, Small Causes Court/District Judge, Pauri Garhwal.
2. Narendra Singh Bhandari, S/o late Rati Ram, R/o Agency Mohalla, Pauri, District-Pauri Garhwal.

.....Respondents.

Dated: 24.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Posti, Advocate for the petitioner and Sri H.C.Bisht assisted by Sri K.N. Joshi, Advocate for the respondent no.2 and Standing Counsel for the respondent no.1.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 17th August, 2006 passed by the respondent no. 1/Judge Small Cause Court/District Judge, Pauri Garhwal.

3. Briefly stated, a suit was filed by the plaintiff/respondent being S.C.C. Suit No. 4 of 1998 praying

for the eviction of the defendant/petitioner. On 14th October, 1998, an order was passed proceeding ex parte. On coming to known about the ex parte proceeding, the petitioner moved an application on 23rd November, 1998 as well as for setting aside the order dated 14th October, 1998 to proceed ex parte against the petitioner. The application was rejected by the Judge Small Cause Court. The Petitioner has preferred a revision against the said order and on 16th February, 2006, the revision was allowed with a direction to proceed the suit as expeditiously as possible.

4. Thereafter, the matter remained pending before the Judge Small Cause Court. However, the respondent no. 2 has preferred a writ petition before this Court stating therein that the Judge Small Cause Court is not proceeding with the disposal of the suit.

5. On 13th July, 2006 in Writ Petition no. 888 (ms) of 2006 following direction was made:-

> *The Presiding Officer, therefore, is directed to proceed with the suit preferably day today proceedings and dispose of within a period of two months from the date of presentation of the certified copy of this order.*
>
> *The Judge Small Cause Court is directed to comply the order passed by this Court on 16th February, 2006 as well as the order passed today.*
>
> *Subject to the aforesaid observations, writ petition is allowed. No order as to costs."*

6. Petitioner has already filed a written statement on 11th August, 2006 after the order has been passed by this Court directing the Judge Small Cause Court to decide the suit within

a period of two months. In reply to the written statement, the petitioner has filed a replication.

7. According to the petitioner, while filing an application for replication, he has not filed the application for taking the replication on the record, later on, the plaintiff/respondent has filed an application for taking the replication on the record.

8. However, since the application to accept the replication has been filed, the same shall be taken on the record. Fresh opportunity shall be given to the petitioner to file the additional written statement.

9. In view of the aforesaid, since the pleadings have already been completed except the additional written statement which the petitioner has been directed to file, the Presiding Officer taking the additional written statement on the record as well as the replication, which has already been filed along with the subsequent leave application, the aforesaid pleadings shall be completed by 10th September, 2006. The case shall proceed thereafter and the hearing shall be concluded within a period of six weeks thereafter.

10. So far as the application under Order 15 Rule 5 of the Code of Civil Procedure is concerned, the Court shall frame one of the point for determination regarding the compliance of order 15 Rule 5 C.P.C. and shall decide the same along with the suit itself. It has come on the record that the order has already been passed for considering the application under Order 15 Rule 5 of the Code of Civil Procedure along with the suit itself

and therefore, I am not interfering with the order as the interest of both the parties have been protected.

11. In view of the above, the application under Order 15 Rule 5 C.P.C. shall be decided along with the suit itself within a period of six weeks from the date of presentation of the certified copy of this order. In the meantime, the pleadings shall be completed including additional written statement.

10. Subject to the aforesaid, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

24.08.2006
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